

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b)
FM Table of Allotments,
FM Broadcast Stations.
(Payson and Camp Verde, Arizona)

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MB Docket No. 03-160
RM-10706

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NOTICE OF PROPOSED RULEMAKING

Adopted: July 9, 2003

Released: July 14, 2003

Comments Date: September 5, 2003

Reply comments Date: September 22, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Sierra H Broadcasting, Inc. ("Sierra"), licensee of Station KAJM, Channel 282C, Payson, Arizona, requesting the reallocation of Channel 282C from Payson, Arizona, to Camp Verde, Arizona, and the modification of its authorization for Station KAJM to specify operation on Channel 282C at Camp Verde. Sierra stated its intention to file an application for Channel 282C at Camp Verde.

2. Sierra filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.²

3. In support of the petition, Sierra states that Channel 282C can be allotted to Camp Verde, Arizona, at the current authorized site of Station KAJM in compliance with Section 73.207 of the Commission's Rules. Sierra further states that Camp Verde satisfies the FCC definition of "community" for allotment purposes. Camp Verde is an incorporated community with a population of 9,451 people according to the 2000 U.S. Census. Camp Verde has its own post office and zip code, local government, police force, public library, school system, fire department, and a weekly newspaper. Camp Verde also has its own Chamber of Commerce, over 15 churches and numerous businesses to serve its residents. According to Sierra, the reallocation of Station KAJM will not create any white or grey area or any loss of service as there is no change in transmitter site. The reallocation could provide Camp Verde with its first local service.³ Sierra also states that Station KAJM will provide city grade service to the entire

¹ See *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

³ See *Winslow, Camp Verde, Mayer, & Sun City West, Arizona*, 15 FCC Rcd 9155 (M.M.B.). Desert West Air Ranchers Corporation proposed the reallocation of Channel 236C, Station KFMR, from Winslow, Arizona, to Camp Verde, Arizona.

(continued....)

community of Camp Verde while Payson will continue to be served by Station KMOG(AM) and Station KNRJ(FM).

4. We believe that the proposal warrants consideration since the reallocation could provide Camp Verde with its first local aural transmission service. An engineering analysis shows that Channel 282C can be allotted to Camp Verde in compliance with the Commission's spacing requirements at coordinates 34-25-48 NL and 111-30-16 WL.⁴ Further, since Sierra is not requesting a change in channel or transmitter site, there will be no gain or loss areas. Payson will continue to receive service from Station KAJM while local service will be provided to Payson from Stations KMOG(AM) and KNRJ(FM). As Sierra has stated its intention to use its current authorized transmitter site for Station KAJM, it will be expected to specify its current authorized site for Station KAJM for the applications for a construction permit and a license for Station KAJM, Camp Verde. Should an alternate site be selected for the allotment of Channel 282C at Camp Verde, Sierra will be required to provide a gain and loss study. Channel 282C falls under priority 3), first local service, at Camp Verde and priority 4), other public interest matters, at Payson. Since Camp Verde is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment of Channel 282C at Camp Verde. As requested, we shall propose to modify the authorization for Station KAJM to specify operation on Channel 282C at Camp Verde, Arizona, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 282C at Camp Verde.

5. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Camp Verde, Arizona	-----		282C
Payson, Arizona	257A, 266C1, 282C		257A, 266C1

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

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Verde, Arizona, but later withdrew the proposal stating that due to rugged terrain around Camp Verde, the signal for Station KFMR would experience multipath interference causing undesirable reception to the service area. Action in the proceeding granted the reallocation of Station KFMR from Winslow to Sun City West, Arizona.

⁴ The allotment of Channel 282C at Camp Verde conflicts with the proposed allotment of Channel 282C at Lake Montezuma, Arizona, in MB Docket 02-12. See 17 FCC Rcd 1660 (M.B. 2002). On March 18, 2002, Sierra filed a petition which was accepted as a counterproposal in MB Docket No. 02-12 proposing the reallocation of Station KAJM from Payson, Arizona, to Lake Montezuma, Arizona, and on September 10, 2002, Sierra withdrew the proposal. Although Docket 02-12 is pending with Sierra's proposal for Camp Verde in conflict with its proposal for Lake Montezuma, we do not view this as a contingent situation since Sierra's conflict is with its own station at two different communities and the proposal for Lake Montezuma has been withdrawn.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before **September 5, 2003**, and reply comments on or before **September 22, 2003**, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on petitioner's counsel, as follows:

Barry A. Friedman
Thompson Hine LLP
1920 N Street, NW
Washington, D. C. 20036

8. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵

10. For further information concerning this proceeding, contact Kathleen Scheuerle, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte*

⁵ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.